

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**
Southern Division

MICHAEL RICO,

*

*

Plaintiff,

v.

*

Case No.: GJH-18-1949

ROBERT GREEN, et al.,

*

Defendant.

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* * * * *

MEMORANDUM OPINION AND ORDER

Plaintiff Michael Rico, who is currently incarcerated at the Montgomery County Correctional Facility (“MCCF”), has sued several defendants associated with MCCF pursuant to 42 U.S.C. § 1983. Pending before the Court are Defendants’ Motion to Dismiss or, in the Alternative, for Summary Judgment (“Motion to Dismiss”), ECF No. 35, and Plaintiff’s Motion for Leave to File an Amended Complaint and Related Relief (“Motion for Leave to Amend”), ECF No. 46. No hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2018). For the following reasons, Defendants’ Motion to Dismiss is denied as moot and Plaintiff’s Motion for Leave to Amend is granted.

I. BACKGROUND

On June 27, 2018, Plaintiff filed separate suits against Defendants Robert Green, Robin White, Christopher Auen, Eric Watkins, and Susan Malagari seeking monetary, declaratory, and/or injunctive relief based on incidents that allegedly occurred while he was detained at MCCF. ECF No. 1 in Civil Action Nos. GJH-18-1949 (“Case No. 49”); GJH-18-1950 (“Case No. 50”); GJH-18-1951 (“Case No. 51”); GJH-18-1952 (“Case No. 52”); GJH-18-1953 (“Case

No. 53”). Subsequently, Defendants Green, Malagari, Auen, and White each filed Motions to Dismiss. Case No. 49, ECF No. 14; Case No. 50, ECF No. 20; Case No. 51, ECF No. 13; Case No. 53, ECF No. 17. Meanwhile, Defendant Watkins filed a Partial Motion to Dismiss and a Partial Answer. Case No. 52, ECF Nos. 11, 12. On August 6, 2019, the Court granted in part and denied in part the Motions, consolidated the cases under Case No. 49, and ordered Defendants to file an Answer or a dispositive motion. ECF Nos. 32, 33.

On September 5, 2019, Defendants Green, White, Auen, and Malagari filed a Motion to Dismiss. ECF No. 35. On September 10, 2019, the Court appointed Noah Sullivan to represent Plaintiff. ECF No. 39. On September 17, 2019 and November 18, 2019, Plaintiff filed a consent motion for an extension of time to respond to Defendants’ Motion to Dismiss in order to give Mr. Sullivan time to investigate Plaintiff’s claims and possibly file a consolidated amended complaint. ECF Nos. 40, 45.¹

On January 8, 2020, Plaintiff filed a Motion for Leave to Amend. ECF No. 46. The Amended Complaint removes Mr. Auen as Defendant, but adds Carlos Taylor, Patrick Beam, Andre Brown, Shelford Gilliam, Anthony Sturgess, Jane Doe Nurses, and Montgomery County, Maryland as Defendants. ECF No. 46-2. The Amended Complaint also clarifies the 42 U.S.C. § 1983 and state law claims that Plaintiff is asserting. *Id.* The Motion indicated that Defendants did not consent to the filing of an Amended Complaint, *see* ECF No. 46 at 2, but on February 14, 2020, Defendants filed a Consent Motion for Extension of Time to File a Response to Plaintiff’s Amended Complaint that suggested Defendants did consent to the filing of the Amended Complaint provided that the Court set a new schedule for filing an answer or dispositive motion in response to the Amended Complaint.² ECF No. 50.

¹ The first Motion was granted. The second Motion is still pending on the docket and will be granted.

² The Court has already granted this Motion.

II. DISCUSSION

At this stage of the litigation, the parties may amend their pleadings “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Courts are to “freely give leave when justice so requires,” *id.*, “unless the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.” *Steinburg v. Chesterfield Cty. Planning Comm’n*, 527 F.3d 377, 390 (4th Cir. 2008).

Here, justice requires allowing Plaintiff to file an Amended Complaint. This is Plaintiff’s first opportunity to file a complaint while represented by counsel, and the Amended Complaint will ensure that the proper parties and claims are before the Court. *See Williams v. State of Md.*, No. DKC-09-879, 2010 WL 3245393, at *2 (D. Md. Aug. 17, 2010) (permitting plaintiff to amend *pro se* complaint after court appointed counsel). Moreover, Defendants appear to consent to the filing of the Amended Complaint so long as they have an opportunity to file a dispositive motion in response to the Amended Complaint. Thus, Plaintiff’s Motion for Leave to Amend is granted, and Defendants’ Motion to Dismiss is denied as moot.³

According to the briefing schedule agreed to by the parties, *see* ECF No. 50, Defendants have twenty-one days from the date of this Memorandum Opinion and Order to respond to the Amended Complaint, either by filing an answer or a dispositive motion. Should Defendants file a

³ In conjunction with the Motion to Dismiss, Defendants filed a Motion to Seal, ECF No. 36, and two Motions for Extension of Time, ECF Nos. 37, 38. The Motion to Seal requests to seal Plaintiff’s medical records that are attached to the Motion to Dismiss. ECF No. 36. Even though the Motion to Dismiss is denied as moot, it will remain on the docket along with the medical records. Thus, the Motion to Seal is granted. The Motions for Extension of Time request additional time to file an affidavit in support of the Motion to Dismiss. ECF Nos. 37, 38. Because the Motion to Dismiss is denied as moot, the Motions for Extension of Time are also denied as moot.

dispositive motion, Plaintiff has twenty-one days to respond to the dispositive motion and Defendants then have fourteen days to file a reply.

III. CONCLUSION

Accordingly, it is hereby ordered by the United States District Court for the District of Maryland that:

1. Defendants' Motion to Dismiss, ECF No. 35, is **DENIED AS MOOT**;
2. Defendants' Motion to Seal, ECF No. 36, is **GRANTED**;
3. Defendants' First and Second Motions for Extension of Time, ECF Nos. 37, 38, are **DENIED AS MOOT**;
4. Plaintiff's Motion for Extension of Time, ECF No. 45, is **GRANTED**;
5. Plaintiff's Motion for Leave to Amend, ECF No. 46, is **GRANTED**; and
6. Defendants **SHALL** respond to the Amended Complaint, either by filing an answer or a dispositive motion, within twenty-one (21) days of the date of his Memorandum Opinion and Order. If Defendants file a dispositive motion, Plaintiff **SHALL** file a response within twenty-one (21) days and then Defendants **SHALL** file a reply within fourteen (14) days.

Date: May 29, 2020

/s/
GEORGE J. HAZEL
United States District Judge